83-6591

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

RATIMIR MAXIMILIAN PERSHE,
Appellant,

v.

ENRIQUE IRIZARRY, President of the Council of Higher Education of the University of Puerto Rico; ISMAEL ALMODOVAR, President of the University of Puerto Rico; ANTONIO MIRO MONTILLA, Chancellor of the Río Piedras Campus of the University of Puerto Rico; DENNIS MARTINEZ IRIZARRY, Dean of the Law School of the University of Puerto Rico,
Appellees

On Appeal from the Supreme Court of the Commonwealth of Puerto Rico

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Jurisdictional Statement

Name of Counsel of Record
(still not available)

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TABLE OF ABBREVIATIONS

AP JUR STA .....Appendix to this Jurisdictional Statement.

CHE.....Council of Higher Education of the University of Puerto Rico.

F.....With number refers to documentary proof submitted to the Courts below.

JUR STA .....This Jurisdictional Statement.

LPRA.....Laws of Puerto Rico Annotated.

NORMS.....COMPLEMENTARY NORMS FOR PROCESSING DEFERMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL, Certification number 59, 1972-73, promulgated by CHE February 9, 1973.

P.....With number refers to documentary evidence submitted to the Courts below.

PR PET CERT .....With number refers to the page of the Appellant's Petition for Certiorari to the PR SCt of January 27, 1983.

PR.....Commonwealth of Puerto Rico.

PR Const.....Constitution of the Commonwealth of Puerto Rico.

PR SCt.....Supreme Court of the Commonwealth of Puerto Rico.

PR SuperCt.....Superior Court of the Commonwealth of Puerto Rico.

J.....With number refers to documentary proof or evidence in AP JUR STA.

J*.....An asterisc following the letter J indicates that the document refered to is fully or in part in English.

UPR.....University of Puerto Rico.

US Const.....Constitution of the United States.

US SCt.....Supreme Court of the United States.

HLNS.....Natural Science of Human Law

BPLT.....Biophysical Law Theory

A. QUESTIONS PRESENTED

QUESTION 1. Can the state university officials deny a hearing to a member of the university personnel as has been done to the appellant, Professor of Law, when there are irregularities in the certain proccedings of the state university, which would adversily affect the appellant's interest if such irregularities are not corrected [cf. F564-583 (J*); F740-742 (J); and B( ) and ff., infra] and when never before, the State University has denied such a hearing to any member of its personnel, since the beginning of its operations in 1903?

1). Would the fact that the proccedings in which such irregularities occurred were the proceeding for deferment of retirement, and the fact that this is the first time that a member of the personnel raised a claim against the irregularities, under the above mentioned conditions [cf. Question 1], make such a denial of the hearings rational?

2). Under the conditions mentioned above [cf. Question 1], would the fact that the appellant does not belong to the political party in power, votes accross the party lines, and is considered by the political groups to be unseless for political moves within the Faculty of Law [cf. P137-138 (J); J352; B( ) and ff., infra] make such a denial of the hearings rational?

3). Under the conditions mentioned above [cf. Question 1], would the fact that the appellant is developing a concept of the biophysical function of human law, and that this concept is considered not to be traditional,

is suspected even to tend to remove the field of law from a direct political control [cf. §(17)-(27), p.13-23, §(51)-69, p.43-56, G. STATEMENT OF THE CASE, infra; and J*1200-1214], make such a denial of the hearing rational?

(1). Can the said University officials deny a hearing to a member of the personnel as is the appellant, Professor of Law, after the appellant has notified in his letter of May 13, 1981, directed to the appellee Irizarry, the then President of the CHE [cf. F564-583 (J*)], that there are certain irregularities which would affect the appellant's Petition adversely if not corrected? Would such a denial be rational on the ground that, at the time (May 13) when the appellant complained about the irregularities,[1] he did not know that these irregularities included secret fraudulent imputations against his professional competence, made intentionally by the said Dean in the Petition for Deferment, on April 14, 1981 [cf. F507-511 (J)], in conspiracy with the Chancellor, the President of the UPR, and the President of the CHE [cf. §(70)-( ), p.56- , G. STATEMENT OF THE CASE, infra]?

(2). Would such a denial as described above [cf. Question (1)] be rational on the ground that, when the members of the CHE voted, on May 13, 1981, on petitions for deferment, they did not know anything about Professor Pershe and voted against his petition without having had a chance of examining or discussing it, thus indirectly denying

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1/Before July 15, 1981, the date when the appellant for the first time received his Petition and saw the filled in imputations against his professional competence made fraudulently by the "superior functionaries" [cf. 705-710 (J)].

the appellant a hearing without having known anything about him or his complaint of May 13, 1981, [see the Minutes of the CHE of May 13, 1981 and the testimony suppressed by the appellees and by the Courts below]? Would such a denial be rational on the ground that, although the CHE received the said letter of May 13, 1981, on the same day and four hours before its meeting on petitions for deferment started, nevertheless the then President of the CHE, appellee Irizarry, failed to submit the said letter to the members of the CHE who were present at that meeting and thus let them vote against the appellant's deferment unaware of any irregularities [the testimony about this fact was suppressed by the CHE and the Courts below; and cf. §( ) and ff., G. STATEMENT OF THE CASE, infra]?

(3). Can the CHE deny a hearing to a member of the university personnel as is the appellant, Professor of Law, by leaving the petition of the appellant for reconsideration [cf. F622 (J)]unresolved for lack of sufficient vote in its meeting of June 26, 1981, thus again, indirectly having denied a hearing to the appellant [cf. the Minutes of the CHE of June 26, 1981; cf. F699 (J); and §( ) and ff., G. STATEMENT OF THE CASE, infra]? Is such a denial rational in spite of the fact that it was based on the secret fraudulent reports to the effect that the deferment of the appellant has to be judged, not by the criteria of the length of service and of the merits, established by the said NORMS... FOR... DEFERMENT [cf. P270-276 (J)], but by the criteria of whether there is a lack of teaching personnel, established by the regulation

about hiring retired personnel [cf. F63-72 (J)]? Is such a denial rational, in spite of the fact that these reports had been fabricated in conspiracy by the then acting Chancellor, Alicia Carlo de Net, and, separately, by the said Dean, both reports dated June 25, 1981 [cf. F674-675 (J) and cf. F682-683 (J)], and had been handed out secretly to the members of the CHE [cf. §( ) and ff., G. STATEMENT OF THE CASE, infra]?

(4). Can the CHE deny a hearing to a member of the personnel as is the appellant, Professor of Law, by a repetition, on September 16, 1981 [cf. F747-750 (J)], of its denial of deferment of May 13, 1981 [cf. F591-595 (J)]? Is such a repetition rational when its then President, the said appellee, Irizarry, advised the appellant on May 19, 1981 [cf. F600 (J); and cf. the testimony which was suppressed by the Courts below] to ask the Chancellor for reconsideration of his unfavorable recommendation, because, according to said Irizarry, if the Chancellor changes his recommendation, the CHE would automatically change (in favor of the appellant) its decision? Is such a repetition rational when at the time when the Chancellor was about to change his recommendation into a favorable one between September 8 and 16, 1981 [cf. F737-739 (J) and cf. F740-742 (J), and cf. F759-760 (J)], the CHE suddenly, and against its agenda, already overcrowded with the problems of the students strike,[1/] decided again against the deferment of the appel-

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1/And contrary to the official (but false) information repeatedly made by Mr. Burgos, the Associated Secretary of the CHE, and by his coworker, to the appellant, on September 10, 11, 14,

lant and thus, again, indirectly against giving the hearing to the appellant /cf. §( ) and ff., G. STATEMENT OF THE CASE, infra /?[2]

QUESTION 2. Can the decision of the PR SCt, to the effect that "granting the deferment asked for by Professor Pershe is one of absolute discretion of the university authorities,"[3] sustain as Federally contitutional said NORMS in their erroneous application to the appellant by the way of the intentional secret fraudulent "reports," secretly imputing the professional incompetence to the appellant[4] and by the special way of the perjured Affidavit of March 2, 1983,[5] to the (fraudulent) effect that, eight months before having made this Affidavit, Mr. Fortuño, the attorney who was hired by the State, by the CHE, and by the Associate Secretary of the CHE, Mr. Burgos, to commit said perjury,[6] gave, on August 17, 1981, to the appellant an official hearing?[7]

15, 1981, that under no condition his case could have been considered in the meeting of September 16, 1981. In the context of all the circumstances mentioned in this question, it is apparent that this sudden and "irrational" placing of the case of the appellant on the agenda of the CHE for the meeting of September 16, 1981 had only one purpose: to interrupt the reconsideration proceedings of the appellant's deferment which the Chancellor openned at this office on September 8, 1981, according to the initial suggestion of the said Irizarry, the then President of the CHE /cf. §( ) and ff., G. STATEMENT OF THE CASE, infra / [2] See how, on October 2, 1981, /cf. F759-760 (J)/ the Chancellor informs the fact that the CHE suddenly intervened with the CHE's decision of September 16, 1981 against the appellant and thus deprived the Chancellor of "the administrative authority to take care of the Petition" of the appellant.

3/ This decision (on appeal from a preliminary injuction in favor of the appellant), dated March 26, 1982 /J123/, suspended the effects of the decision of the PR SuperCt of February 4, 1982 /J60-62/, deciding the preliminary injunction in favor of the appellant's reinstatement into his professorship and research. This decision of the PR SCt was not based on any evidence or arguments, but merely on the statement as quoted below, made in the Motion of the appellees of March 24,

THE REST OF THE QUESTIONS PRESENTED is still in manuscript form and will be immediately send to the US SCt as supplement.

1982 /J /, announcing that the appellees were sending in a Petition for Certiorari for review of a decision handed down by the PR SuperCt, ordering the appellees to reinstate the appellant in to his possition as the Professor of Law "in spite of the fact that he has reached the age of sixty five, obligatory age for retirement, and after his Petition for Deferment had been denied."

B. Parties

A list of all parties to the proceedings in the court whose judgment is sought to be reviewed is in the caption of the case in this Court.

C. TABLE OF CONTENTS

D. Reports

There is no reference to any official or unofficial reports of any opinions delivered in the courts or administrative agency below, since there are none.

E. Grounds of Jurisdiction of this Court

This Court's jurisdiction is invoked under Section 1258(2) and (3) of Title 28, United States Code. The Supreme Court of Puerto Rico, in denying appellant's Petition for Certiorari to review a Summary Judgment of the Superior Court of Puerto Rico (Court of First Instance), sustained the federal constitutionality of a statute of the Commonwealth of Puerto Rico as construed in its application to the facts of this case by said Superior Court, and also sustained its Federal constitutionality as a promulgated statute, independently from its construction, with the effect of depriving the appellant of his law professorship and of his fundamental research, and of suppresing the development of his natural scientific concept of law, without due process of law and by denying him the equal protection of the laws.

The said statutes of the Commonwealth of Puerto Rico are the following:

1) COMPLEMENTARY NORMS FOR PROCESSING DEFERMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL, Certification number 59, 1972-73, promulgated by the Council of Higher Education of the University of Puerto Rico, February 9, 1973.....J

2) General Regulations of the University of Puerto Rico, article 11, Certification number 114, 1980-81, promulgated by the Council of Higher Education of the University of Puerto Rico, January 16, 1981.....J

3) Law of the University of Puerto Rico, Law No.1 of January 20, 1966, as ammended, 18 LPRA §601 et seq.....J

4) Law of Civil Procedure of Puerto Rico, 1959, Rule 1 and 36.3, 32 LPRA Ap. III, R 1 and 36.3 (1979).....J

5) Constitution of the Commonwealth of Puerto Rico, Bill of Rights, Article II, secs. 1, 4, 7, and 8. .....J

The appellant has drawn and is drawing in question the validity of said statutes as construed in said application, and on their face regardless of their application, on the ground of them being repugnant to the Constitution of the United States.

In addition, the appellant has claimed and is claiming that Puerto Rico state officials, acting under color of Puerto Rico state statutes, regulations, custom and usage, deprived him of his procedural, substantive, and judicial due process rights (5th and 14th Amendments), of his right to the equal protection of the laws (5th and 14th Amendments), of his professional liberty (5th and 14th Amendments), of his freedom of expression (1st Amendment), and of his de facto property (5th and 14th Amendments), as well as of his privileges and immunities as a citizen of the United States (14th Amendment). Appellant has also claimed and is claiming against deprivation of his rights to remedies under 42 USC § 1983 and 1985(3).

The final decree of the Supreme Court of Puerto Rico denying said Petition for Certiorari was entered on May 26,

1983. This final judgment (decree) appealed from is a denial of a Petition for Summary Judgment made bythe appellant upon a Petition for Certiorari to the Supreme Court of the Commonwealth of Puerto Rico. This denial was made without ever granting a hearing, although the evidence submitted to the Superior Court (Court of First Instance) of the Commonwealth of Puerto Rico, San Juan Chamber, and to the Supreme Court of the Commonwealth of Puerto Rico, required a summary judgment for the appellant.

This denial affirmed the Summary Judgment of the Superior Court (Court of First Instance) of the Commonwealth of Puerto Rico, San Juan Chamber, in favor of the appellees. This Summary Judgment of the Superior Court was rendered without any notice or warning, without granting a hearing, and refussing to accept the evidence (F1-1207) offered by the appellant.

This Summary Judgment affirmed the denial of the Petition for deferement of retirement of the appellant, which was based on a report secretely fabricated, intentionally and in conspiracy, by the appelles charging the appellant with professional incompetence. This affirmed denial also approves a denial of a hearing which every member of the UPR has been given by an impartial board, whenever one would suffer irregularities in proceedings of the UPR, of which one would become a victim. The appellant is the first one in the whole history of the UPR who has been denied such a hearing.

A Notice of Appeal to the Supreme Court of the United States was filed in the Supreme Court of Puerto Rico and

in the Court of First Instance (the Superior Court of Puerto Rico) on June 3, 1983 (the main part of the record being in possession of the Supreme Court and the interlocutory part being in possession of the Superior Court). The undersigned attorney, Alberto E. Lugo Janer,[1/] had been the counsel for the appellant in the Courts of the Commonwealth of Puerto Rico since September 1982 and until the rendering by the Supreme Court of Puerto Rico of the above mentioned final decision May 26, 1983.

1/Juris Doctor, University of Puerto Rico, 1981; Legum Magistry, University of Pennsylvania, 1982; Member of the Bar of the Commonwealth of Puerto Rico (1981), of the Bar of the US District Court for the District of Puerto Rico (1982), and of the Bar of the US Court of Appeals for the First Circuit (1983).

F. Provisions of Law Involved in the Case.

1. Constitution of the United States, 1st, 5th, and 14th Amendments.....J

2. 28 USC § 1258(2) and (3) .....J

3. 42 USC § 1983 and 1985(3).....J

4. Constitution of the Commonwealth of Puerto Rico, Bill of Rights, Article II, secs. 1, 4, 7, 8 .....J

5. Rules of Civil Procedure of Puerto Rico, Rules 1 and 36.3, 32 LPRA Ap. III, Rules 1 and 36.3 (1979).....J

6. Law of the University of Puerto Rico, Law No. 1 of January 20, 1966, as ammended, 18 LPRA § 601 et seq.....J

7. General Regulations of the University of Puerto Rico, Article 11, Certification number 114, 1980-81, promulgated by the Council of Higher Education of the University of Puerto Rico January 16, 1981.....J

8. COMPLEMENTARY NORMS FOR PROCESSING DEFERMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL, Certification number 59, 1972-73, promulgated by the Council of Higher Education of the University of Puerto Rico February 9, 1973.....J

9. 31 LPRA § 3371-3511.....J

10. Manresa y Navarro, Comentarios al Código Civil Español (1967).....J

11. Puig Brutau, Fundamentos de Derecho Civil (2nd ed., 1978).....J

12. Corbin, On Contracts (1953 ed.).....J

G. STATEMENT OF THE CASE

BACKGROUND (1) The appellant,[1] professor Ratimir Maximilian Pershe, born May 24, 1916, has been employed by the University of Puerto Rico[2] Law School since 1965, first as associate professor of Law and director of the Law Library. Then, in 1970, he was promoted upon evaluation of his performance in law classes[3] and unanimous recommendations of the Law Faculty Personnel Committee,[4] to full professor with tenure [F1 (J*515)].[5] In 1979, he left his administrative duties to dedicate full time to law teaching and to research in the field of theory of law [F125(J638)]. As of June 31, 1981, he was prevented by the appellees from continuing in his position of law teaching and research in a way that, according to the submitted evidence,[6] deprived

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1/The appellant is a member of the New York State Bar and of the Bar of the US District Court for the District of Puerto Rico. 2/Abbreviated to UPR. 3/This evaluation means that the appellant was found, repeatedly, on the unannounced visits to his classes during several years, to have met the highest standars of communicating and transmitting the information, as scheduled by the curriculum, to all members of his classes with their full and articulated participation in discussion and in making questions [J512]. 4/Before this promotion, the Law Faculty verified the appellant's earned degress of Doctor of Law, University of Zagreb (1940); M.S.L.S., University of Columbia (1953); and LL.B, University of Fordham (1962),,with the respective Universities. 5/The letters F and P with numbers refer to proofs and evidence submitted to the Courts below. The letter J with number refers to documentary proof or evidence in AP JUR STA. An asterisk following the letter J indicates that the document referred to is fully or in part in English. 6/This refers to the evidence submitted to the Courts below under the letters F and P, some of which is included here in AP JUR STA under the letter J. The proofs and evidence, submitted under F, P, and J, do not include all the evidence. The appellant reserved a large part of the evidence, if needed, for trial. Another part of the evidence is still in the unilateral possession of the appellees [access to which the Courts below denied to the appellant without reason, see P200-221, P195-196, P184-194, P181 (J203 etc.)]. The same evidence collected under the letters F and P does not include any of the numerous testimony offered and suppressed by the Courts below. Furthermore, the evidence offered in AP JUR STA is only a part of the evidence submitted to the Courts below under F and P. Nevertheless,

him of his federal rights and inflicted upon him great injuries, which will become irreparable unless he is reinstated into his previous position.

(2) His academic achievements, throughout the time of his employment, have been meritorious, whether in the classrooom performance,[1] or in his research of fundamental problems of law which lead him to the development of the concept of the natural science of law,[2] in building up the law library collections and services,[3] in the institutional selfevaluations of the legal education and of the bar examination in Puerto Rico,[4] and in developing a program in 1979, for new special independent services in law libraries, by which all persons would have the right to receive information about their legal rights and about the situation of their cases in the hands of their attorneys or other judicial and administrative functionaries (this program was frustated by the fact that the President of the US, who promoted the legislation in Congress in favor of such programs, lost the election in 1980).[5]

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the proofs and evidence submitted under AP JUR STA are by themselves sufficient to show that the violations of the federal rights of the appellant have been committed, are substantial, and require a Summary Judgment for the appellant. 1/Cf. F497-500 (J709-712), F514-521 (J*720-727), F527-555 (J728-756), F556-557 (J*757-758), F558-559(3) (J759-762), F50-62 (J563-575), F2-12 (J*517-526), F125 (J638). 2/Cf.P 206-208 (J209-210), P43 §75 (J435), F942-976 (J*938-972), F29-48 (J*543-561), F49 (J562), F73-123 (J*581-626), F124 (J637), F127-129 (J640-642), F130-144 (J*643-657), F145-146 (J653-659), F147-444, F445-458 (J*660-677), F472-479 (J691-698), F480-481 (J*697-698), F514-521 (J*720-727). 3/F977-1196 (J*993-1187). 4/F740-742 (J582-583); the submission of the documentary proofs of the auto-evaluations, the depositions, and the expert testimony has been suppressed by the CHE denying a hearing to the appellant and by the Courts below denying to the appellant a day in court. 5/The submission of the documentary proofs and of the testimony concerning this program has been suppressed likewise, see the preceding footnote /n.4, p.2, supra /.

STUDENTS (3)In his eighteen years as a law professor at the UPR Law School, the appellant has not only fulfilled loyally his duties in this substantial length of service,he also made a sustantial academic contribution [cf. § (1) and (2), supra]. For instance, he has been very successful in communicating in his classes. This can be seen from all the evidence submitted to the Courts below by all the parties on the point of his communicating in classes, which is unanimously in favor of the appellant. He was repeatedly evaluated from 1965 to 1969, promoted in 1970, and reaffirmed in his law teaching in 1979 by the Chancellor [cf.F125 (J), and (1), specially its n.3 and 4, supra; F1 (J*); J] In 1980, he was granted a sabbatical leave for the purpose of preparing his hypotheses of the natural science of human law to validate them in his law classes within the traditional curriculum [F517-518 (J*), F73-92 (J*), F130-140 (J*)]. On April 10, 1981, the then Dean of the Law School, appellee Dennis Martínez Irizarry, convoked a hearing in his office to receive testimony by the students about the appellant's performance in his Theory of Law class (this class being a large one of fifty senior students in the last semester of their third law school year).

(4) After the hearing had been held, the students that participated in it summarized their testimony (given, according to them, during more than one hour) in a document dated May 25, 1983, addressed to the Council of Higher Education. According to the said testimony of the students they wanted that high Council to know about the excellence of the teaching of Professor Pershe [F548-553 (J)]. The students who, according to their testimony, could not attend the hearing for reasons beyond their

control, sent in writing their enthusiastic approval of the performance of Professor Pershe in the classroom /F497-500 (J)/. The above mentioned testimony of the students, who expressed themselves in the said hearing, also represent the feeling of other students who could not participate in the hearing but expressed themselves about the class performance of Professor Pershe.[1/] The following is a summary in English of what the students attested to in Spanish to have "sustained" in the above said hearing /F497-500 (J)/: "1. That the class about Theory of Law which Professor Pershe offers is one of the most important classes which the students of the Law School may have in all the years which they spent in the Law School."

(5) The reasons they "sustained," in support of the above quoted statement, are: "a." It is the only course in which the students are taught how to make an analysis of a case on its own facts and to apply analytic criteria, a process until then unknown to the students, apart from the application of written legal norms. "b. That this course introduces the law students to a field of

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1/There exists other independent evidence which the appellant submitted to the Courts below as testimony of the excellence of his performance in the classes, which also should have been considered by any fair administrative and judicial bodies, such as is individual written testimony of other appellant's law students / F532-537 (J), F546-547 (J)/; and such as is the testimony of the appellant's law students, offered by them in the preceding years about the class performance of Professor Pershe. Then, they offered this testimony for no other reasons than to express their profound recognition of the academic excellence of professor Pershe /for instance see the plaque at F60-62 (J)/. Besides, many law students of Professor Pershe offered oral testimony which was suppressed by the CHE and by the Courts below. It should be noted that the law students of Professor Pershe were not moved to take his classes just to get high grades, since, for instance, in his Theory of Law classes, he gave lower grades than those given in other sections by other professors, and still the number of students that enrolled in his classes was the largest of the sections. The submission of the testimony and of the documentary proofs concerning the comparison of the grading and the motivation of the students has been suppressed likewise.

law (the Natural Science of Human Law), previously completely unknown to them, which permits them to penetrate into the value of law in human interrelations. "c." The course is oriented to develop in the students all the capacities of an attorney at law to analyze a legal problem in any situation. "d." The course teaches the would-be attorney at law not to refuse to give legal help only because there may seem to be no favorable solutions to a problem within the established legal norms, as there are other certain ways, facilitated by the Natural Science of Human Law, to propose a solution to a genuine problem. Also, the course teaches that the clients should be accepted for "jural reasons," besides economic interest.

(6) In the same letter, the students continue to attest to that which they "sustained" in the hearing as follows: "2." That Professor Pershe is one of the professors most dedicated to the students. He invites and receives them in his office and home whenever they need additional instruction at any hour any day of the week. "3." That Professor Pershe is one of the few professors that produces original work, such as is his Biophysical Theory of Law. He is a cultural and scientific asset to the Law School of the UPR of whom any other law school would be proud. "4." That there is practically no other professor in the Law Faculty of the UPR, besides Professor Pershe, who is prepared to teach this course. He dominates philosophy of law, antiquity of law, and modern problems of law. He applies this knowledge constantly to improve the competency of legal reasoning of his students, strengthening it with his findings from the Natural Science of Human Law. Professor Pershe constantly uses practical examples. It should

be emphasized "that Professor Pershe communicates more effectively in the classroom than some other professors of our faculty do." "5." The students in this hearing expressed, in the name of the class, their recommendation to the Dean and to the CHE that Professor Pershe should continue to form a part of the Faculty in order to give the students a unique opportunity to get enriched by the extraordinary benefits to be received from his teaching /F548-553 (J)/.

PRACTITIONERS (7) It appears clearly from the above testimony of the law students /6 (3)-(5), supra / that the appellant, Professor Pershe, has communicated effectively in his classes, that the students receive from the teaching of Professor Pershe extraordinary benefits which they do not get in any other class, and that there is practically no other professor who is adequately prepared to teach the courses which Professor Pershe teaches. That these students will not be disillusioned in their appreciation that they obtain from Professor Pershe the best kind of legal education, can be gathered from the additional evidence submitted or otherwise offered to the CHE and the lower Courts. This evidence contains the testimony of very successful practicing attorneys in Puerto Rico to the effect that one of the most important factors that shapes their professional capacities is the extraordinary benefit received from the teaching of Professor Pershe. For instance, the testimony of Jay A. García -Gregory, Esq., a young successul partner in one of the largest law firms of Puerto Rico, should be pointed out since it represents similar experiences of other practicing attorneys related to the teaching of Professor Pershe.[1/]

1/The testimony of some of such practicing attorneys is included here in AP JUR STA /F545 (J), F554-559 (J)/. The giving of the oral testimony by many other attorneys has been offered and suppressed by the CHE denying a hearing to the appellant, and by the Courts below denying to the appellant a day in court. Also, the oral testimony of those attorneys who feel that they would testify only if

(8) In his testimony [F584-588 (J) 7. Mr. García-Gregory mentions that he graduated from the UPR Law School in 1972, that thereafter was a part-time professor of legal research at Columbia University, and later was a clerk of the US Distric Court in San Juan for eight months, before he entered (in February 1974) the private practice in the San Juan law firm of Fiddler, González & Rodríguez. It is important also to mention that Mr. García-Gregory has been participating creatively in many activities of the legal profession. For instance, he has been an active member of the Bar examining Board and, due to his contributions to the improvements of the Bar Exam, many complaints against the Bar Exam disappeared. These complaints heretofore often had been seen and heard in the newsmedia. In his above referred to testimony, he expresses himself in Spanish (which the appellant summarizes in English) in the following way:

(9) I feel it necessary to express my personal opinion concerning the deferment of retirement of Dr. Pershe, whose student and professional colleague I have been for a long time. Recently, I had the opportunity to be present in the class of Professor Pershe on Legal Theory. I am convinced that he enjoys a very good health, that he is very active in his academic work, and that during the next five years he could exercise an extremely important function to improve the legal profession in Puerto Rico. Although all my time has been taken up in a very active practice and with professional commitments, I take it to be my foremost duty, which I owe to law teaching and to the legal profession in

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summoned has been equally suppressed. They would not testify voluntarily because the suit is against functionaries of the government which they represent.

Puerto Rico, to emphasize the importance which Professor Pershe has had in my professional formation as an attorney-at-law /F538 (J)/.

(10) I was a student of Dr. Pershe at the beginning of my legal studies in 1969, and in the last semester of my legal studies in 1972. On the first occasion, Dr. Pershe was may professor in the course of Legal Research and Method. "The exercises of analysis and synthesis, as well as the search for and rigorous indentification of the facts and of authorities in resolving fact situations periodically supplied by Professor Pershe, achieved that gradually my fear from the unknown disappeared, and at the same time that my appreciation and enthusiasm awakened towards the utilization of law as an instrument for vindication of victims and for perpetuation of the values which support our present democratic society" /F539 ( )/. In this course I acquired the habit to use the law library incessantly, which habit still gives me a foremost advantage in my practice.

(11) When the second semester of the third year arrived, I had the good fortune of having had Professor Pershe as mentor and guide in the course Theory of Law. There again, through continuous exercises and critical exchanges, I truly was able to consolidate my legal methodology to which I was initiated in the first year by Professor Pershe. I learned from Professor Pershe how to segregate rights and duties, privileges, liabilities, powers and immunities in all possible situations and transactions, including things, persons and values. Through this approach I was then confronted, just as I have been confronted many times since in my practice, with the discovery of the reason for the existence of certain juridical norms which I had to

decide whether to apply or not to the above-mentioned relations of facts. Still today, I find myself deeply obliged do Dr. Pershe for his basic methodology which enables me to discover the facts which give the winning margin to a victim /F540 (J)/.

(12) "If the facts, he /Professor Pershe/ would say, are not established in detail as a result of rigorous analysis of the presented proof to sustain a claim, the search for a statute or precedent is vitiated at its roots and may lead to an injustice and to progressive loss of the confidence in the adjudicative process. Unfortunately for their clients, too many attorneys rely upon a norm without any adequate connection to a specific fact situation. This too often seems to alleviate their problems. In such a situation, such attorneys forget that the primary function of law is to watch that everyone gets what is his or hers, and that justice be done to an individual in his personal and concrete interaction with those who are around him. Therefore, it is indispensable to examine all concrete circumstance which constitute a controversy in order to identify beforehand the involved rights and correlative duties, and to determine whether the norms exist and to what extent they can cover the situation or whether such a situation requires a new juridical pattern to cover the same specific situation" /F540 (J)/.

(13) Allow me to demonstrate to you concretely how the methodology of Dr. Pershe became of great utility in my practice. I could not take the bar exam immediately after graduation, because I became an "Associate Law Professor" in the Faculty of Law of Columbia University in the City of New York. I was immediately able to teach the course of Legal Research to the first year law students

at Columbia University. After teaching for one semester at Columbia, I returned to San Juan and then only two weeks remained in which to prepare for the bar exam. I prepared myself during these two weeks with my friend, Eduardo Estrella, who is now one of my closest colleagues in the practice. We decided to use in the bar exam the methodology of Dr. Pershe. We reduced to basic schemes the components of each problem, which we analyzed in connection with the subject matters of bar exams from previous years. After we established the jural relations, we asked ourselves what was the basic reason for a norm to be applied in each case /F541 (J)/.

(14) Having used the above mentioned method, I was able to confront peacefully the diverse situations of fact in the bar exam. "After the bar exam, my friend Estrella and I were able to confirm that the margin of our error in the assignment of juridical consequence to the presented facts was relatively very small. My experience thereafter, as a member of the Bar Examination Board, confirmed the validity of the method of analysis and of the basic respect for the facts which I received from the courses of Dr. Pershe. Let me also mention that during my term as Director of the Law Review of the University of Puerto Rico, Dr. Pershe was all the time a stimulating factor to my professional improvement. I am sure that this is true also of all those students and professionals who from time to time consult with him. I am convinced that the University of Puerto Rico, and above all, the Faculty of Law, would be deprived of a great opportunity of continuous and efficient juridical information for future attorneys if Dr. Pershe were to retire now" /F541 (J)/.

(15) Mr. García concludes his testimony in the following way: "Each day the facts which nurture the law

in its continuous development are becoming more complex and require a greater effort to understand them and to deal with them adequately. The teaching of law must adopt as its basis a respect for the facts, such as they present themselves to us, not as we would like that they be presented to us. The client, who relies upon his attorney, has a right that his case be carefully analyzed and documented, synthesized and delimited, so that the nature of his claim could be properly identified. In this way we could avoid costly errors and frustrations of expectations which often occur due to the failure to identify with precision, before beginning to argue and make a corresponding opinion, the factual shapes of the rights, duties, immunities, liabilities, and privileges, which otherwise remain hidden in the case and its documents. In this sense, Dr. Pershe still has a lot to contribute to the formation of future juridical minds which could be of utility to our Puerto Rican community. It would be truly unfair to deprive of his work prematurely him who has demonstrated so much dedication to justice through long hours of effort. His incessant productivity deserves to be continued, stimulated, and compensated, and not to be cut off. To this I am ready to testify any time when it be desired"/F542 (J)/.

(16) Mr. García-Gregory also turned to another attorney, Mr. Martínez-Muñoz, who was then a member of the CHE, in the hope that Mr. Martínez-Muñoz, as an attorney, could better appreciate the academic significance of giving a deferment of retirement to Professor Pershe. Mr. García-Gregory wrote in a letter to Mr. Martínez-Muñoz "that the CHE is obliged to give an opportunity to be heard to Dr. Pershe. This is why I am writing to you." Besides, also wrote Mr. García-Gregory to Mr. Martínez-Muñoz, if

Professor Pershe had to retire now this would result in a great injury to Professor Pershe and his wife.[1/] Furthermore, Mr. García-Gregory wrote a letter to Dr. David M. Helfeld, who as Dean of the Law School hired Professor Pershe, and who, Mr. García-Gregory understood, knew well "the rare ability /of Professor Pershe_/ to instill in his students a basic respect for facts. I have come to appreciate this basic commitment of Max /Professor Pershe_/ to the basic justice of simple facts." Mr. García-Gregory accompanied with his letter to Dr. Helfeld one of his briefs submitted to the US Court of Appeals for the First Circuit, to demonstrate the influence in his work of the method of Professor Pershe.[2/]

TEACHING (17) It is clear from the testimony of the practicing attorneys, which has been suppressed /cf. n. 1, §(7), p.6-7, supra _/, such as is the testimony of Jay A. García-Gregory, Esq. /cf. §(8)-(16), supra _/, that these attorneys consider Professor Pershe to be a law teacher of extraordinary importance to the legal education of the attorneys in Puerto Rico. According to the same testimony, not only that the appellant has communicated effectively to the law students, but also that the influence of his commu-

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1/As will be seen further in the facts /§( ) and ff., infra _/, Mr. Martínez-Muñoz could not do anything because the decision to remove Professor Pershe was a political one (not an academic one as it should have been) commanded by the highest executive authorities of the Commonwealth of Puerto Rico /P137 §60 ( ) _/. 2/It will be seen further in the facts /§( ) and ff., infra _/ that Dr. Helfeld was unable to achieve anything which he was asked to do by Mr. García-Gregory in the said letter. Apparently, Dr. Helfeld, who has occupied a high position in the executive branch as President of the Governor's Labor Policy Council, was prevented to intervene because of political reasons.

nication actually created a legal "blue print" for the practicing attorneys from which they were able to perform "law jobs" competently. This testimony also indicates that this "blue print" also was a contributing factor to a substantial improvement of the Bar Exam in Puerto Rico. This testimony highlights the fact that the excellent teaching of Professor Pershe has been the result of his research in the field of the Biophysical Theory of Law (BPLT), especially of the Natural Science of Human Law (HLNS), which he founded.[1/] If one compares the teaching of Professor Pershe as indicated by his present and past students [cf. §(4)-(16), p.4-13, supra] and the summary of his development of the concept of the Natural Science of Human Law [J], one will notice that his theory represents a natural scientific foundation for law practice and law teaching.

HLNS (18) However, the appellees and the Courts below, beyond having suppressed the above described testimony, given by the students and the practitioners about the development of the said concept [§(3)-(17), p.3-14, supra], also suppressed the development of the said concept itself.

1/Some of the above said research resulted in his developing practical tools which became an extraordinary help for students and practitioners, as they attested to. For instance, his "Strategic Brief" requires a practicing attorney to assemble around the four constant variables of law (Action, Facts, Controversy-Rule, and Situation Sense) all the obtaining states of affairs of a case, and to compress the resulting four variables into a "close-up" of one letter-size page, regardless of the size of the case. In addition, the appellant constructed exams to validate his law hypotheses within the traditional research and legal method adopted by the Law School Faculty on October 11, 1977. These tools [for a sample see J] were offered in evidence and were suppressed by the CHE denying a hearing to the appellant and by the Courts below denying to the appellant a day in Court. (J*), F536-544 (J), and F556-557 (J*).

/c.f §(20) and ff., infra/ This development is summarized at J ; and is outlined as follows: The physical observation of how a normal Court feels to be required to resolve a case, in order to reestablish an unjustly injured victim into its previous position, indicates that there is a "specific" (law-bond) "requiredness" which could be recognized in the many varieties in which it appears. For instance, the history of law indicates[1] that a factual situation of unjust injury has always been required to be fully recognized before a norm could be considered for its application.[2] The historical precedent of the practice of law in Sumer, twelve thousand years ago, indicate that the force of law rests not in the state but in the "specific (law-bound) requiredness" that there be a "specific (law-bound) togetherness (the factual situation)" and in the execution of that which such "togetherness""requires." A thesis of the BPLT[3] is that Natural Selection developed a basic unit of the function of law in the humanoid brain. This function of law is not performed competently unless it succeeds, among all participating and interfering forces, to establish the force of law in a case according to the said "requiredness."

1/ R.M. Pershe, LA TEORIA DE DERECHO, mimeografiado, Escuela de Derecho de la Universidad de Puerto Rico, 1967-81, 400p.

2/"Traditionally, one is accustomed to think that we must have some wrong which violated a law before we can apply a law. (Answer) According to the BPLT, this is inadequate thinking to present the function of law. More specific and therefore accurate thinking is that we need an injury to a person, not violation of any law necessarily, and that this concrete injury be unjust to a person or to a group, not to their societal substitutes. When we do have something which is unjust injury, we have the function of law, which we may call a norm, but this function is not law on the books, no a norm on the books. The law on the books may be the part of the factual situation which describes the unjust injury, which is the condition for the function of law." idem.

3/BPLT or Biophysical Law Theory is mentioned is §(17), supra, and discussed in Summary (J).

(19) A formula has to be designed to bring about detection and recognition of the "specific" biophysical characteristic of law of the said basic unit. The designing of this formula has been suppressed by the appellees and the Courts below. To design this formula, the appellant was constructing law acquisition models in his law classes within the traditional curriculum [cf. §(17), p. 13-14, infra]. He was validating the relevant hypotheses by the results of his tests, which he administered as an inobtrusive part of the regular traditional exercises and tests in his law classes. To help to construct the said model of acquisition of law, the appellant was also developing in his law classes in a similar way a "specific competence" model and a "law performance" model. These models are to help to determine what forces made law performance deficient and why, according to the "law competence" model. The development of these models has also been suppressed by the appellees and by the Courts below. The development of the concept of the Natural Science of Human Law, through such models and the formula, would lead to the recognition that law is not a second order question, which the present legal system answers to the effect that any law, and any legal system, is better than none, however outrageously deficient it may be.

(20) The development of the concept of the Natural Science of Human Law forms a basis for the recognition that law is the first order question. The BPLT answers this question with its thesis that "performance" of law must be "fit" in an evolutionary sense. This "fitness" of law is tested by its competence to maintain the stability of "unbounded unsettleness," a biophysical entity of which the percept is "freedom" by resolving finitely "specific" (existential) conflicts.[1/]

1/For an analysis of these statements see Summary, p.7-15 (J).

Finally, this fitness also depends upon the final question of whether law is sufficiently fit to furnish "raw materials" for Natural Selection to increase the frequency of law and thus to cause an increase in freedom. To indicate how this development of the said concept could contribute already at this stage to a better understanding of the "biophysical" forces which, until now undetected, have been shaping the Constitutional Law of the United States, some US Supreme Court cases are to be examined as an example of one of the best existing performances of law. To demonstrate how the development of this idea would influence other jurisdictions world-wide, it is demonstrated how an early recognition of the same idea would have prevented the enactment or the enforcement of the Nuremberg Laws, 1935, and the execution of the ensuing Hitlerian genocide order. /For other important points of the development of the idea of the HLNS see the Summary at J /.

(21) The development of the natural scientific concept by the appellant was made possible by the Faculty of Law, especially by its then Dean Dr. David M. Helfeld, and by the Committee for Materialization and Evaluation of Projects (the Office for Coordination of Study and Research) at the Río Piedras Campus of the UPR, especially by the then Deaness of Studies Dr. Leticia del Rosario, a well known Puerto Rican physicist. The decision in favor of the development of this idea was based on the submission of the proposal /F942-976 (J*)/to find out whether a fundamental study had ever been made in the worldwide literature about the natural scientific nature of law. In 1973, when Dr. Thoday, Head of the Genetic Institute, University of Cambridge, England, approved of the appellant's idea having indicated that this idea of the natural science of human law was feasible, the above mentioned Deans of the

(37) According to the above mentioned commentary of Manresa y Navarro in §(36), supra, the Puerto Rican contract law, specially 31 LPRA § 3375, requires performance, which is not only that the appellant teaches and the UPR pays a salary, but also which includes all the consequences derived in good faith and in law. Such a good faith consequence is the assimilation of customs. That this custom includes the custom of the UPR to grant all the law professors the deferment of retirement, except if there is a cause not to do so, can be gathered from the description of such a custom. The practice of the UPR to grant to its law professors deferment has been so firm and continous, throgh many decades, that it has been completely unnecessary to place it into the contractual context (thus meaning that the parties do not even have to talk about it at the time of making the contract). Normally, the deferment is an accessory matter of the employment of a law professor at the UPR which had been agreed upon and which without question will be performed. Thus, there is no doubt that according to the Puerto Rican contractual law the appellant has the property right to the implied contract as comfirmed by Manresa y Navarro. This is why the Courts below never denied that the appellant has the said property right to the implied contract.

(38) According to 31 LPRA § 3372, the contracting praties can make clauses and conditions which they consider convenient to them, if such clauses are not contrary to the law, to the morals, not to the public order /cf. P286-289 (J)/. Thus, according to this section, the clause of implied tenure of the appellant is valid unless it violates a law. This clause does not violate any law. The practice of the UPR to grant to the professors of

Law School and of Studies, supported the development of this idea not only because this development had been a serious scientific investigation, but also because they became aware of the fact that this development has been of substantial importance /F78-92 (J)/.On the basis of the above mentioned proposal /cf. §(21), p.17, supra /, the appellant was granted a sabbatical leave for 1972/73, which he spent at Cambridge University, England, and at the University in Munich, Germany. He found out that there has never been done any fundamental study about the natural scientific nature of law. As a result of his investigations in Europe, he then changed his project from "Natural scientific investigation into physical elements of law" to "Investigation into biophysical elements of law." This latter investigation was found feasible in Cambridge, as mentioned above. This very successful sabbatical leave ended up with a program which the appellant proposed for creating natural scientific models of human law /cf. F78-92 (J*)/. The outline of this idea, as far as it was developed by 1981 /cf.§(18)-(20), p.15-16, supra /, indicates that, if the appellant had not been deprived of the opportunity to conclude the said development of his idea, the idea could have been published already and could have thrown new substantial light on our understanding of human law.

ADVERSITIES (22)However, in 1973, when the appellant returned to the UPR, its administration was radically changed, down from the President and from the Chancellor to the Law School Dean. This change turned out to be adverse to the natural scientific project of the appellant in the field of theory of law. The practical philosophy of this new administration was that there was an economic crisis which did not allow for the "luxury" of making fundamental

investigations and for building library collections, that all courses could be taught from one book, and that the legal education should not be encouraged since the legal profession can be only parasitic.[1/] Even the then Dean of the Law School considered that the legal teaching should not be burdened with the facts of the cases and that "los resumenes de casos" ("can briefs") instead of factual analyses, should be used in legal instruction.[2/]

(23) The new UPR administration proposed in 1974 that the autonomous administrations of the different faculties and institutions be centralized. As a result, the Law School Library would have been centralized with the General Library and the Law School with the School of Social Sciences. The members of the Law School faculty opposed this centralization, and upon their pressure, the Dean named Professor Pershe to prepare the faculty's defense against the centralization. As a consequence, the appellant, instead, on working on his scientific project, was obliged to spend all his time (beyond his teaching time) on the preparation of the said defense, which involved making an extensive and profound evaluation of all Law School Library operations and collections. In order to demonstrate that the proposal of the new administration to reduce the said Law School Library into a reading room was untenable, he proved that almost all the academic programs of the Law School

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1/The testimony as to this practical philosophy has been suppressed by the appellees and by the Courts below. 2/For example, the then Dean stated his policy as follows: "I propose... the idea that... law teaching... should depend on the doctrinal textbooks, on the can-briefs, and on the student's study groups..." See the speech of the then Dean given at the "First Conference on the Puerto Rican Law Teaching" on the 22 of April 1977, 1977-78 Interamerican Univ. L. Rev. 787-794, at 790

would have had to be eliminated if such a reduction had been allowed /F977-1075 (J*)/. After the faculty thus demonstrated to the new administration that the reduction of the Law School Library would mean a deterioration of the legal education in Puerto Rico, the new administration decided not to reduce the Law School Library but instead to centralize it with the General Library.

(24) The above took place from 1974 to 1975. The fight of the Law Faculty against the said centralization took another two years thereafter. The appellant was able to demonstrate to the said new administration of the UPR that the operation of the Law School Library under the proposed central administration would cost four times as much than if the Law School Library were to remain autonomous; that the UPR should even be more decentralized; that the advantage of a centralization should be achieved by introducing an "inter-comm" computarization; that the UPR at that time had on its payroll twelve employment positions which did not exists in fact, and, that if it were to be keen at economizing, it should abolish these employment positions /F1076-1196 (J*)/. After 1977, such special assignments of Professor Pershe continued until 1979, when the said "new" administration (which was in power from 1974 to 1978) was replaced. These assignments, such as that to deal with a strike of the Law School Library employees, were effective in keeping Professor Pershe away from the work necessary to conclude his said project on the natural science of human law.

PROJECT (25) In spite of the extremely adverse conditions to the development of the concept of the natural science of human law by the appellant under the said "new" administration, the appellant nevertheless succeeded in continuing to develop his project in his law classes within the traditional curriculum, in which effort he received an enthusiastic response from the students and the practitioners. This could not substitute the need for a full devotion to the conclusion of the project, but helped to validate some hypotheses, which could serve for preparing the natural scientific tests which would help to discover the presence of a biophysical human law. For instance, these validations of his hypotheses in his law classes enabled him to obtain the consent of the Mexican government, in 1975, to his making tests in the jungles of Mexico 1/ and later on, in 1979, to persuade another UPR administration to enable him to resume the work on his project by granting him a new sabbatical leave for this purpose.

(26)In addition to working in the development of the concept of the natural science of human law in his law classes, the appellant worked in his project also during his vacations. For instance, as a part of such work he participated in teaching in CIDOC, "Centro Intercultural de Documentación", Cuernavaca, Mexico, on the "Practice of law suppression"/cf. F46-48 (J*)/. He used this opportunity to get cooperation for his project from the Mexican anthropologists Demetrio Sodi and Dr. Salomón Nahmud Setton, Director del Instituto Nacional Indigenista. They would help to transpose the tests of the appellant into the

1/See §(26), p.21-22, infra.

equivalent of the still culturally intact indians in several Mexican jungles, Seri, Lacondón, Huichol, Cora, Tepehuana - y Mixe. The Instituto Nacional Indigenista of the Mexican government would cover the costs of the airplane trips to the seven jungles where the above mentioned different tribes live, and the cost of the facilities needed to administer the tests. Nonetheless, the UPR would have to contribute $5,000 for other yet uncovered necessary costs /cf. F29-45 (J*)/.

(27) However, although the Committe for Materialization and Evaluation of Projects of the Río Piedras Campus of the UPR agreed to provide such a contribution, it was never materialized because the then Dean of the Law School refused to approve it finally,[1/] probably due to his own policy /cf. n.2, §(22), p. 19, supra / and to the above mentioned policy of the "new" administration /cf.§(22), p.18 19, supra /.[2/] The said "new" administration, in its reign from 1974 to 1978, made it impossible for the appellant to continue systematically on his work on the said project, which would have enabled him to produce a preliminary paper, by assigning him the above mentioned absorbing special administrative tasks

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1/ With the above mentioned refusal the appellant's investigation was ended since no time beyond his vacation was alloted to him to look for further funding in the US for his said investigation in Mexico. 2/The testimony suppressed by the appellees and by the Courts below would have shown that the said Dean and the said "new" administration tried to suppressed the appellant's project and tried to eliminate from the Law School curriculum the law classes that the appellant was teaching. The same testimony would have also shown that this attitude on the part of the said Dean and the said "new" administration was due to the fact that the appellant taught that the respect for the facts is of a paramount importance in the legal education, whereas the said Dean wanted to substitute factual analyses for "can briefs."

and by denying him any funds needed for his project. In 1979, the said Committe for Materialization and Evaluation of Projects persuaded the then incoming Chancellor of the Río Piedras Campus to grant to the appellant another sabbatical leave in 1980 so that he may have resumed the work on his Project with the plan to produce a preliminary paper by April 1981 /F73-123 (J*)/. By the end of 1980, Professor Pershe had already a draft of eight chapters in preparation of the said preliminary paper which had been planned to be submitted to the Chancellor in April 1981. These chapters had to be integrated yet and the preliminary paper could have been completed by April 1981, if this was not prevented and suppressed surreptitiously by the then Dean, appelle Dennis Martínez Irizarry. 1/

NORMS (28) The above mentioned suppression contradicted the express and implied terms and conditions of the contract of employment of the appellant with the UPR. Generally, the said contract of employment includes the following terms and conditions: First: That the appellant was granted tenure in his employment by disposition of the General Regulations of the UPR when he became full professor in 1970. Second: That when the appellant reaches the retirement age of 65 (which he reached on May 24, 1981,) the NORMS 2/ and the practice of deferment under the NORMS would be applied to him. Third: That the initial premise /NORMS, p.2,

1/ For a detailed exposition of this see R.M. Pershe, Declaración Jurada Sobre la Supresión de la Investigación el 16 de enero de 1981 (Affidavit concerning the suppression of the appellant's Project on January 16, 1981) /F445-458 (J)/; and also see §( ), p. , and ff., infra.

2/ COMPLEMENTARY NORMS FOR PROCESSING DEFERMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL, Certification Number 59, 1972-73, promulgated by the Council of Higher Education of the University of Puerto Rico February 9, 1973 /P270-276, (J)/.

§(2), line 1_/ of the said NORMS is that "the retirement of /a_/ member of the UPR personnel could be deferred after he reaches 65 years of age" /NORMS, p.2, §(1), lines 6 and 7_/. Initially, if one does not ask for deferment one will be retired. Fourth: The interested persons have: "the right to decide whether they want to request the Deferment of Retirement" /NORMS, p.2, §(3), lines 1 and 2 _/. This is a right to have the NORMS applied to a petitioner of deferment, not a dispensation or exemption from a law.

(29) Fifth: "The interested persons will have the responsibility to formulate said petition within the terms and conditions indicated in the above reproduced dispositions /the initial ~~permise~~_/ ~~and in these~~ NORMS, which will be of application to all the university personnel..." /NORMS, p.2, §(3), lines 4-7_/. The "above reproduced dispositions" (the initial premise and the right to decide whether to request deferment) were already dealt with here above in the previous paragraph Third and Fourth. So far as the "terms and conditions" refer to the further dispositions of these NORMS which deal with the formulation of the petition for deferment, they refer to rules ONE and TWO at page 4 of the NORMS. These NORMS, "which will be applied to all Universtiy personnel " /NORMS, p.2, §(3) _/, describe indetail the formulation of the petition in rule TWO of their page 4. Sixth: According to the rule TWO, page 4, the "interested" persons are to fill in their petition "from February 15 to 28." Seventh: According to the rule ONE page 4, this they are suppossed to do only after the "Personnel Office" has determined "from February 1 to 14" who is subject to retirement, has "notified the interested persons" in Deferment ("by conduct of the respective Schools"), has advised the interested persons of "their right to request the Deferment,"

and has provided these persons with "a set of forms" published by the Central Administration /NORMS, p.4, rule ONE/: The NORMS, by express rules /p.4, rules ONE and TWO/ assign the responsibility of formulating a petition to him who is the "interested" person in obtaining the deferment. This responsibility is created only after such a petitioner has received from the Personnel Office a notice, addressed to him personally, "by conduct of the respective School", that he is subject to retirement, that he has the right to ask for deferment, and that for these purpose he has to fill in the form addressed to him and return it to the Personnel Office, according to rule TWO of page 4 of the NORMS.

(30) Eighth: The NORMS expressly determine that they are the only ones which apply to a petition for deferment, that they do not apply to "services contract" after retirement, and that neither the "service contract" regulation apply to a petition for deferment /NORMS, p.2, §(3), lines 7 and 8/. Ninth: Rule ONE at page 3 of the NORMS determines, "About the Right to Deferment and its Obligations," that the "superior funcitonaries of the petitioner" have the "obligation" "to report favorably or unfavorably on the Petition of Deferment, being allowed to formulate the observations which they consider correct, to the effect that the CHE be enabled to resolve finally what it considers to be adequate". The structure of this rule ONE of page 3 of the NORMS clearly indicates that the right of the petitioner of deferment is based on the duty of the "superior functionaries" to report and on the invitation "to formulate the observation which they consider correct." Besides, according to the same page 3, the right to deferment is based on the prohibition imposed upon the CHE to resolve finally before they have received the reports

and the correct observations, if there are any.

(31) According to the above said structure of the rule ONE of page 3 of the NORMS, there exists a right to due procedure of deferment under the same NORMS. "The Right to Deferment" is the right to a competent performance upon the position for deferment, as expressly set up by the said rule ONE page 3. "Its Obligations" have no meaning if they refer to the obligations of the right. These obligations have meaning only in connection with the due process of deferment, which is the right to deferment. Not only the structure of said rule ONE, but also the title to section "II" of the NORMS (the central one of the three sections): "About the Right To Deferment and its Obligations, confirm that the most important part (of the central premise) of the NORMS is to establish the due process of deferment /NORMS, p.3, / which shall be applied to all UPR personnel -/NORMS, p.2, §(3) /. Eighth: Rule THREE of page 3 of the NORMS establish that deferment of retirement is a continuation of the employment and not a new service contract. Ninth: The NORMS apply to the petitioner until his petition is finally approved or disapproved.

(32) Historically, these NORMS...FOR...DEFERMENT are one of the most important products in Puerto Rico of the wave of resurrection of the due process of law in the field of civil rights in state universities, which emerged during the decades between 1950 and 1980, specially in the enactments of 1957, 1964 and 1972, in the US. This product was consecrated in the NORMS... Certification Number 59, 1972-73, of the Council of Higher Education of the Commonwealth of Puerto Rico /See n.2, §(28), p.23, supra /. Other related products of the same wave, which served as one of the movements for established deferment, has been the installation of the duty of the University of Puerto

Rico to protect the exercise of "liberty of professorship and research," and the relative right of the students that this liberty be protected for the benefit of the students, Art. 11 of the General Regulation of the University of Puerto Rico(1981) /F1204-1205 (J)/. The above mentioned due process of deferment / §(28-32), p.23-27, supra / was established by this wave in order to prevent the capricious removal of the professors whose scientific work is disliked by some new incoming powerful administrator. Thus, for the best interests of the students and of the academic freedom of professors, these NORMS also made sure that a professor, who decided to stay after the retirement age, and the students, who desired him to due the benefits they had been receiving from him, get the due procedure of deferment.

(33) This wave of civil rights is also a part of a genuine Puerto Rican movement out of which came the Commonwealth of Puerto Rico. Some of the members of the Constitutional Convention of 1952 happened to be at the same time the most important leaders of the University of Puerto Rico. They made a special effort to eliminate any trace of fascism in the state university. They tried to prevent the occurrence of official behavior which would be prejudicial to civil rights. They expressly included in the Constitution of the Commonwealth of Puerto Rico (1952) a provision ordering the system of public education, which includes the UPR, to embody the practice of civil rights /P.R. Const. Art. II, sec. 1, p277 (J)/. The only rational reason for the constitutional obligation of the University to practice civil rights is to educate practicing civil rights. The best way to achieve this is to have the public functionaries entrusted with public education to teach Civil Rights by their practice. Just in the same

way, the only rational reason for the promulgation of the COMPLEMENTARY NORMS FOR PROCESSING DEFERMENT OF THE OBLIGATORY RETIREMENT OF THE UNIVERSITY PERSONNEL [P270-276 (J)] has been that the "deferment procedure" [see §(28), p.23, supra] prevents arbitrary dismissal of meritorious professors who at their retirement age are making important "innovating" contributions to the education of their students [see Art. 11.4 of the General Regualtion of UPR at J].[1]

CONTRACT (34) Although the tenor of Art. 11.4 of the said Regulation of the UPR is that innovative professors are desirable [as is Professor Pershe as demonstrated by his work (J), and as his students testify to , §(3)-(18), supra], the UPR in addition developed a more liberal general policy of granting the deferment to the professors who were not innovators but who would qualify as capable, healthy, of some lenght of service, and meritorious. Beyond this general policy of the UPR, the UPR maintains a special policy in its Law School, which it has enforced without exception since the enactment of deferment procedures in 1950.[2] to the effect that a law professor has never been denied a deferment.[4] Thus, when Professor Pershe became a Full Professor in 1970, he did not acquire only the right to tenure, but also a right to implied tenure, to be removed only for cause, after he has arrived at the retirement age. Accor-

1/The argument about the reason for those NORM being unique rational reasons is also supported by the history. The norms about deferment where for the first time introduced in the UPR in 1950. [Reglamento Universitario, Cap. III, sec. 5 and the Resolution of the CHE, Art. 5, sec.14, of November 28, 1950, both of which established the retirement system at the UPR]. They were reshaped in 1973 into the form they have today. Although their content is practically the same, the NORMS of 1973 reduced the space provided for the regulation of retirement to practically one page, and the rest of six pages were devoted exclusively to the due procedure of deferment. This change is confered also by the change in the title from the Regulation of Retirement in 1950 to ...NORMS FOR PROCESSING DEFERMENT...

ding to the law of contracts in Puerto Rico, this right is an implied property right. It is a de facto tenure. The removal for cause has to be established in a due process of deferment, before he can be removed. It is "the usage" which constitutes a contractual right as much acquired or vested as it was when the appellant still had a right to de jure tenure.[4/]

(35) In the case of the appellant, when his contract of employment was made in 1965, the UPR consented not to remove Professor Pershe or deny him a deferment except for cause. This consent was the consequence of Professor Pershe's good faith towards the UPR, by which he gave up all his valuable rights in New York to devote all his abilities to the UPR. On the side of the UPR, this consent was the consequence of the UPR's knowing and express and implied promise that it would treat Professor Pershe as any other professor of law and recognize also his property right to the implied tenure /compare 31 LPRA § 3375 (CC of PR) in n.2, §(33), p.27-28 supra /. Furthermore, at that time of making the contract, Professor Pershe and the UPR, knew that this contract about "implied tenure" is a service contract which is like a tenure contract, not contrary to

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2/See n. 1, §(33), p.27-28, supra /. 3/The submission of the testimony to the effect that no law professor has ever been denied a deferment, has been suppressed by the CHE, denying a hearing to the appellant, and by the Courts below, denying to the appellant a day in court. 4/The civil Code of Puerto Rico), 31 LPRA §3375, provides that "to have a contract you need only a consent. This consent includes all express agreements, as well as all cosequences, which according to their nature correspond to good faith, to the usage, and to the law" /P281 (J) /. 31 LPRA § 3421 (the Civil Code provides that "all things which are not outside of commerce, even the future ones, can be the object of a contract. Equallly all the services, which are not contrary to good customs, could be the object of a contract" / P282-283 (J) /. 31 LPRA § 3477 (the Civil Code) provides that "the uses and the custom of the land shall be taken into account in the interpretation of the ambiguities of the contracts, supplying in these the omission of the clauses which ordinarily are established " / P284 (J) /.

good customs. "Implied tenure" can be the object of a contract just as is "express tenure" [compare 31 LPRA § 3421 (CC of PR), in n.2, §(33), p.27-28, supra]. Moreover, at the time of making the contract, Professor Pershe and the UPR, consciously supplied the clause that ordinary has been established betweeen the UPR and all other Law Professors [compare 31 LPRA § 3477 (CC of PR), n.2, §(33), p.27-28, supra].

(36) This Puerto Rico contract law, 31 LPRA § 3375 and 3421, which institutes the "implied tenure" of the appellant, has been confirmed unanimously by the Civil Code commentarists in a way which clearly establishes the property rigth to the "implied tenure" of Professor Pershe, created by said contract between him and the UPR. One of the most expert of said commentarists deals with 31 LPRA § 3375, which corresponds to an Article of the Civil Code, as follows: This 31 LPRA § 3375, "which requires performance, not only of the expressly agreed to, but also of all the consequences which are derived, in good faith and in law, from the usage to which the interpretive rule seems to joins that which is called "custom of the land". Looked at closely, it is a norm which, more than the exegesis of the contract, tends to contemplate it extended to all that which by being an observed practice, reiterated and admitted, is believed to be unnecessary to place expressly into the contractual text, being usually, accessory matter and of a merely performatory nature of what has been agreed upon," 8,2 Manresa y Navarro, Comentarios al Codigo Civil Español 440, lines 7-17 (1967) (comenting the equivalent to 31 LPRA sec. 3375), cf. P285 (J). [Manresa y Navarro being recognized by all courts in Puerto Rico as the most authoritative interpretor of the Civil Code of Puerto Rico].

law the deferment, whenever there has been no cause to deny it, is the "usage" which does not violate the said NORMS - or any other law. The "superior functionaries" and the CHE operate under the above mentioned rule ONE, p.3, of the said NORMS as they have been operating every year [cf. § (30)-(31), p.25-26, supra], since 1973 when the NORMS were promulgated. The practice of the UPR, since 1951 (the year when the regulation of deferment was established), has been to grant deferment to all law professors. This practice established also that the said "superior functionaries" and the CHE could deny deferment to a law professor only for cause under the said NORMS. The appellees were in the full knowledge of this operation of the NORMS, applying to law professors the criteria of denial of deferment for cause. Without the knowledge of the application of this criteria they could not have, intentionally and in conspiracy, intentionally defrauded the members of the CHE by giving them secretely maliciously false causes for removal of Professor Pershe, with the intention of depriving him of his right to be removed only for cause [for testimony see §( ), and ff., infra].

(39) This Puerto Rican contract law constitutes the fact that neither CHE nor the appellant violated the said NORMS when they made a clause impliedly that the UPR will not remove the appellant by denying him deferment, except for cause [cf. 31 LPRA § 3372, in P286-289 (J)]. The case law construing the above mentioned section reduces its application only to the clause which would require something which is forbidden by a law or rule, Borges v. Registrador, 91 D.P.R. 112 (1964). The implied clause in the contract of the appellant and the UPR does not change anything which would be forbidden by the NORMS. It only specifies that in the case of Law Professors, the reports of the "superior functionaries"

refine the criteria, from being "correct," to the increased requirement that a disfavorable recommendation as to deferment be "for cause". By the said clause "for cause", the NORMS were not abrogated. The term "correct" ("atinente")[1/] in rule One at p.3 of the said NORMS is not changed but rather is refined. For a disfavorable recommendation to be "correct", it must be, in the case of law professors, "for cause". All of the Civil Code commentarists agree with this interpretation, as Manresa y Navarro comfirm when he refers to 31 LPRA § 3372.

(40) The said NORMS (rule ONE,p.3) by requiring the "superior functionaries" to make "correct" reports /cf. §(39), supra /, do not require them to any particular type of "correctness" beyond telling the truth /cf. n.1, §(39), supra /. The criteria of denying deferment to a Law Professor "for cause" is to refine the said term of making a "correct" report, required to be made by the "superior functionaries". This refining does not change in any way the concept of "correct" ("atinente") in the said rule ONE. The NORMS do not forbid any such change. Any such change would be in conformance with these NORMS, since it would not reduce the function of these NORMS in any way, but it would enhance it /cf. §(28-31), p.23-26, supra /. Since the NORMS do not forbid such a change,

1/The word used in Spanish in rule ONE, p.3 of the NORM is "atinente" which the appellant translate into "correct". In Spanish the word "atinente" excludes any possibility that the reports be intentionally false or fraudulent."ATINENTE" pertinent (pertinente), to find that which one searches with prudence (encontrar lo que se busca a tienta), to tell the truth (acentar), (afirmar con la solución)," Pequeño Larousse Ilustrado 109 (1964).

it being only "accessory matter and of merely performatory nature of what has been agreed upon" [Manresa y Navarro, see §(36), supra], if an addition of the criteria "for cause" to be used as a part of the concept of "correct" in the NORMS is a change, then the NORMS not only permit such a change but also invite it for the benefit of the UPR and for the furtherance of the objetive of the NORMS to protect the due process of deferment.

(41) The question of applying to the Law Professors the criteria of denial of deferment only "for cause", and not only for "correctness", is not only recongnized by the practice of the UPR as an indispensable measure for getting the desired competent law professors, but also is a valid "accessory matter" according to Puerto Rican contract law, as it does not violate any law, morals or the public order, 31 LPRA § 3372. According to the US Constitutional Law, this practice is the rational criteria of the said NORMS, which does not create any illegal discrimination. Thus, these criteria "for cause" do not violate in any way the NORMS. The Manresa y Navarro and the Puerto Rican contract law do not violate the US Constitutional prohibition against irrational discrimination, can also be gathered from the contractual priciple facio ut des (I will do it, but you will fully compensate me for doing it). In other words, the appellant agreed with the UPR that he would serve the UPR if it gave him what it would give to others similarly situated to him [Manresa y Navarro, 1967, p.399]. [1/] The Puerto Rican contractual law, also points to

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1/"The contract exists from the consent of one of more persons to obligate themselves with respect to other or others, to give something or to give some service." 31 LPRA § 3371, P266 (J).

another way of testing whether a contractual clause violates or does not violate the law, in this case the NORMS. For instance of the NORMS do not deal with appellants , the UPR can make agreements about the usage of the NORMS. Thus the "implied clause" in the agreement between the appellant and the UPR is not affected by the NORMS. Thus the UPR violated the contractual law of Puerto Rico (31 LPRA § 3371, cf. n.1 of this paragraph) also because the NORMS do not declare anything about the agreements.

(42) According to 31 LPRA § 3372, no contract or clause can violate the NORMS, if they do not contradict the content of the NORMS [Manresa y Navarro, 1967,p.388]. Certainly, to deny deferment "for cause" does not contradict the NORMS, which merely require that such a denial must be based on a truthful report ["atinente", cf. §(39), n.1,p.24, supra]. In conclusion, there is not doubt whatsoever that the clause in the employment contract between the appellant and the UPR to the effect that the appellant will not be denied deferment except "for cause" is both consistent and required by the Puerto Rican law of contracts. This statement is unanimously supported by all authoritative commentarists of the Puerto Rican contractual law [cf. § (34-41_, p.29-36, supra].

CLAUSES (43) After having ascertained the nature of the employment contract between the appellant and the UPR, according to the said NORMS and according to the law of contract of Puerto Rico [cf. § (34)-(42), p.29-37, supra], it is important to mention also the clauses of the said employment contract. These clauses are what is usually known as "implied" clauses or agreements declarations, since they are not written into the text of the contract [cf. n.3 §(34)-(35), p.29-30, supra]. Both, according to the Anglo-American Law and to Puerto Rican Law, such "implied"

clauses, or agreements, are also express clauses, or agreements found by the process of interpretation /3 Corbin, On-Contracts,163-171 (1953 ed.)_7, because the interest of one who has relied on the("implied") declaration, made in such a way, will be protected. In this way, the difference is established between the theory of the will and the theory of the declaration, "II, I.Puig Brutaw, Fundamentos de Derecho Civil, 65)2nd ed., 1978).

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The following are the clauses of the employment contract between the appellant and the UPR, which are not written into the text of the contract, but nevertheless are express clauses according to the above mentioned authorities, Corbin and Puig Brutau. Manresa coincides with their view /for a discussion of the Puerto Rican contract law with regard to this point, as interpreted by Manresa, see §(34)-(42), p.29-37, supra 7.

(44) The above mentioned clauses include the following: 1. Tenure until the age of 70;[1/] 2. Applying to the appellant the NORMS on an equal basis as to other professors of law; 3. Applying to the appellant the NORMS as to others, without fraud, secrecy, brutality, or conspiracy; 4. Applying to the appellant the practice under the NORMS to the effect that the appellant as a law professor would not be denied deferment without cause; 5. Applying to the appellant the above mentioned practice under the NORMS, without discriminating against the appellant for political reasons or to suppress the development of his concept of the natural science of human law; 6. The NORMS not to be applied to the appellant in an intentionally fraudulent way, simulating due procedure of deferment; 7. The NORMS not to be applied to the appellant by way of conspiracy, depriving him of the benefits of the NORMS; 8. The NORMS

1/According to the discussed Puerto Rican law in the above mentioned paragraphs /§(34-(42), p.29-37, supra 7, as a conclusion of fact, the appellant's employment contract with the UPR require that the appellant be permitted to stay in service with the UPR until he reaches the age of 70, since there existed no cause which would have justified denying him deferment.

not to be applied to the appellant secretly in order to deprive him fraudulently of his professorship and research; 9. The NORMS, requiring the "superior functionaries" to make "correct and true" reports to the CHE [rule ONE, p.3], not to be applied to the appellant fraudulently by imputing to him professional incompetence, secretly without giving him the opportunity to be heard.

(45) The above mentioned clauses continue as follows: 10. Not to discriminate against the appellant as a law professor by denying him the deferment without cause, because he does not belong to any political party; 11. Not to discriminate against the appellant as a law professor by denying him deferment without cause, because he is developing a concept of law disagreable to the political party in power, because this concept would deprive the party of the law as an instrument of the party politics. 12. To give to the evidence offered a rational consideration in any evaluation of his professional competence, (such evidence as for instance, is offered in §(1)-(27), p. 1-23, supra); 13. Treating the appellant like any other professor of law in the use of research and publication secretaries [cf. §( ) and ff., infra]; 14. Not to deprive the appellant of the professional and scientific contacts which he can only have through his employment in the UPR Law School and which are indispensable to the development of the concept of the natural science of human law [see P206-208 (J)].

(46) 15. Giving the opportunity to the appellant to develop his concept of the natural science of human law,

just as any other law professor is allowed to develop a concept of his theory of law; 16. Not to oblige the appellant to adhere to such "private" philosophies about legal education of the appellees as that, instead of facts, "canbriefs" should be used in the law classes for instruction /cf. n.2, ¶(22), p.18-19_7; 17. Let the appellant enjoy the liberty of professorship and research, guaranteed by Article 11 of the General Regulations of the UPR, 1981 /cf., F1204-1205 (J)_7; 18. Give the appellant the opportunity to be heard by an impartial board, whenever there is an irregularity in the proceedings conducted by the state officials of which he may become a victim otherwise.[1/] In conclusion, the above mentioned clauses /¶(43)-(46), supra _7 create vested rights in the appellant through his contract of employment with the UPR, ~~according to the contract law of Puerto Rico /cf. ¶(34)-(42), p.29-37, supra _7~~.

EXPECTATIONS (47) The above described evidence concerning the employment contract of the appellant with the UPR /cf. ¶(28)-(46), supra _7 and the meritorious performance of the appellant /cf. ¶(1)-(27), p.1-23, supra _7 furnish sufficient proofs that the appellant had a firm basis for having rational expectations to continue his services at the UPR, after he reached the retirement age of 65. The appellant expected to continue teaching his law classes and to be able to continue unobstrusively to validate his hy-

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1/The testimony offered about the right to such a hearing, and about the fact that in the entire history of the UPR the appellant was the only member of the UPR personnel to which such a hearing was denied, was suppressed by the appellees and by the Courts below.

potheses in these law classes and conclude his researsh in the field of the natural science of human law. The above refered to expectations include: 1. That the appellant's vested property interest would be respected [cf. §(28)-(46)], not intentionally violated; 2. That the testimony of the students of the appellant and of the practitioners and all other testimony and evidence in favor of the appellant be given a rational consideration [§(1)-(27), supra], not be ignored.

(48) The above mentioned expectations continue as follows: 3. That the testimony and evidence of the appellant's contribution to the legal education and to the community be given rational consideration [cf. §(7)-(16), p. 6-13, supra] [1/] 4. That the appellant would be confronted with any testimony, evidence, and accusers against his professional capacity, and that he would have the opportunity to defend himself. 5. That the appellant would be given a hearing by an impartial board whenever he could show irregularities that would affect adversely his professorship and research, such as have been the secret fraudulent reports about the professional incompetency of the appellant [cf. n.1, §(44), p.38, supra]; 6. That the appellant would be given such a hearing whenever he is being evaluated, and the evaluation could lead to his removal with-

1/The appellant's deposition given in public hearing, held at the UPR Law School in November 1978, before the Commission of the P.R. Supreme Court for Evaluation of the Bar Exam and the Legal Education in Puerto Rico, 1978 [mentioned in F740-752 (J)], has been received with the openly expressed approval of the legal practitioners and educators, who were present in that hearing. The evidence offered by the appellant about this deposition was suppressed by the CHE and the Courts below denying the appellant a hearing.

out cause [cf. B(34), p.29, supra].

(49) That the workshop, which includes about 10,000 interdisciplinary works, a considerable part of which the appellant donated to the Law School Library for the use of his students [see F810-811 (J*)], and the interdisciplinary connections, which the appellant developed in the Rio Piedras Campus through many years with support of the Committee for Materialization and Evaluation of Projects [cf. P206-208 (J)], would not be intentionally destroyed without giving a fair hearing to the appellant, specially when the appellees know that this would adversely affect the development of the natural scientific concept of law and reduce, practically to zero, the opportunities of the appellant to obtain a job in other universities; 8. That the fact that ~~there is a common de-~~ nominator between the teaching and research methods of the appellant, on one side, and, on the other side, the successful law practice methods of the practitioners (as attested to by the appellant's former students), be given rational consideration, not be ignored by intentionally making fraudulent reports imputing to the appellant professional incompetence; 9. That the appellant's natural scientific work in law would be given rational consideration and be continued at the UPR, since the students have testified to the great benefits which they have received exclusively from the results of this work in their law classes, and not destroyed capriciously without an impartial hearing.[1/]

1/It is a rational expectation that the appellant's scientific work would be continued at the UPR since the Commit-

(50) In conclusion, the expectations /¶(47)-(49), p.40-42, supra _7 of the appellant to continue his services at the UPR have been so solid that the appellees, probably pressed by the political orders of the highest state authorities to eliminate Professor Pershe, to annihilate his development of the concept of the natural science of human law, and to deprive him of his professorship and research, felt compelled to start a concerted action in complete secrecy in order to simulate deferment proceedings for the appellant and submit secretly fraudulent reports about the appellant's professional incompetence. The sole purpose of this concerted action has been to deprive the appellant of his federal rights, confident that they can get away with such a felony without punishment, because the defendant would not have economic means to sustain his defense to the end.

SUPPRESSION (51) The above mentioned concerted activities of the appellees took place in a series of acts which, in their chronological order, look harmless, but all of which indicate two independent characteristics: the intentionality and the conspiracy to deprive the appellant of his

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tee for Evaluation and Materialization of Projects, the Administrative Board, and the Chancellor resumed support of the appellant's Project in 1979 /cf. ¶(21)-(27), p.17-23, supra _7. This Project was initiated by the same Committee in 1972. In 1980, the above mentioned University bodies gave the appellant a sabbatical leave to resume this Project and to prepare the hypotheses for validation in the appellant's law classes /cf. F73-92 (J*), F130-140 (J*)_7. The continuance of the appellant's service to the UPR after he reaches his retirement age was understood in many legally positive ways. The contract of the sabbatical leave obliged the appellant to remain in the service after he reaches his retirement age /cf. F127-129 (J)_7. Besides, the appellant was warned by the Administrative Board that he had to stay at the service of the UPR after the sabbatical leave was over /cf. F124 (J)_7 and he had to have two persons to co-sign for him that he would return to work at the UPR after the sabbatical.

federal rights of a substancial importance. In September 1980, the appellant learned that a new law dean was appointed during that summer. The appellant tried to get an appointment with this Dean to show him the progress which he made on his Project while on sabbatical leave and to try to get some additional secretarial publishing help from him in order to be able to prepare a preliminary paper in April 1981 according to a plan submitted to the Chancellor in the beginning of 1980 /cf. F130-131 (J*)_7. The appellant had already started to type a chapter in clean on June 25, 1980 /cf. F160-187 (J*)_7. However, the appellant was unsuccessful in securing an appointment with this Dean. Finally, on September 30, 1980 the appellant asked the new Dean, appellee Dennis Martinez Irizarry in writing /cf. F146 (J)_7, to give him an opportunity to explain to the Dean the status of his work. However, the appellant did not receive any response to this letter and all his efforts to see the said Dean remained fruitless until January 16, 1981. On January 7, 1981, the appellant prepared another part of his work for the Dean /cf. F147-159_7, hoping that the Dean would discuss the appellant's Project now that he had returned from his sabbatical leave, and would need a full-time publication secretary in addition to the part-time investigative secretary who had been assigned to the appellant since May 1980.

(52) Finally, on January 16, 1981 the appellant was called to come to the Dean's Office. The appellant believed that finally he would be able to resolve the pro-

blem of his Project, which was to get the Dean to approve an additional secretary for the appellant. The Dean had to decide this, although the allocation to the appellant of an additional secretary was clearly guaranteed by the new budgetary assignment for six "publication" secretaries for the law faculty members. This was in response to the requirement of the accrediting agencies that the law faculty members be supported technically in making investigations and in preparing papers for publication. The appellant learned about this guarantee, and about the fact that already six secretaries had been hired from the Acting Dean then in May 1980. These secretaries had been hired exclusively for the research of the members of the law faculty not for the administrative work. Since only the appellant and one other faculty member, Dr. Efrain Gonzalez Tejera, were using secretaries, at that time, the appellant thought it would be easy to get the Dean's approval for an additional "publication" secretary for him.

(53) The appellant, in view of the above mentioned circumstances, was confident that the Dean would give due consideration to the fact that the appellant was the only professor who had to meet a publication deadline for April 1981, and would, therefore, grant to the appellant a secretary to be able to meet his special publication compromise. The appellant thought that the Dean would easily assign him such a secretary at least as long as other faculty members continued to dispense with the need of such a secretarial help. The testi-

mony that these secretaries, called publication secretaries, were assigned by the Central Administration to the law faculty members, is confirmed by the open invitation of the Dean to the faculty members on July 8, 1981 [cf. F704 (J)] and again on August 18, 1981 [cf. F714-715 (J)] urging them to use the publication secretaries and assuring them that these secretaries were guaranteed to them expressly by the specific UPR budget assignment (made in 1980).[1/]

1/Although the documents F704 and F714-715 are dated as of July 1981, the testimony offered and suppressed by the appellees and the Courts below proves that those special secretaries for the Law School professors were established already in May 1980.

Most respectfully submitted from San Juan,

Puerto Rico, this 22nd day of October, 1983.

Ratimir Maximilian Pershe

RATIMIR MAXIMILIAN PERSHE
pro se

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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

RATIMIR MAXIMILIAN PERSHE,
Appellant,

v.

ENRIQUE IRIZARRY, et al,
Appellees

On Appeal from the Supreme Court of the Commonwealth of Puerto Rico

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J. APPENDIX TO THE JURISDICTIONAL STATEMENT (AP JUR STA)
/ The paging of this Appendix is made with the letter J with page number. An asterisc next to the letter J indicates that the page is fully or in part in English /.

I. Opinions delivered upon the rendering of the Judgment (there is none).

II. Other Opinions and Orders (include next to each Opinion or Order the documents upon the submission of which each was rendered).

III. Judgment (includes, next to the Judgment appealled from, the document upon the submission of which the Judgment was rendered, and the orders, with their corresponding documents, which the Judgment apealled from refers to).

IV. A copy of the Notice of Appeal.

V. Other Materials.

COUNSIL OF HIGHER EDUCATION
UNIVERSITY OF PUERTO RICO
Rio Piedras, Puerto Rico

1981-82
Certification number 32E

I, Luis E. González Vales, Executive Secretary of the Counsil of Higher Education, CERTIFY:----------

That the Counsil of Higher Education in its meeting of September 16, 1981, aproved the following resolution in relation with the Motion for Reconsideration submitted by Dr. Ratimit Maximilian Pershe in view of the denial by the Council of the deferment of the obligatory retirement requested by said professor:

"This (sic!) CHE studied the petition for deferment of obligatory retirement made by Dr. Ratimir Maximilian Pershe."

"The dispositions which govern the deferment of obligatory retirement are reserved in the Certification No. 59 (1972-73) of the CHE, in which Certification also the procedure is established to follow, in relation to the petition for deferment of obligatory retirement and to the processing subsequent to making said petition."

"The final decision of that which the CHE considers adequate in relation to such petitions is completely discretional with the CHE."

"Having studied all the records of the case together with the legal opinion of the advisers of the Council, the Council declares the reconsideration requested by Dr. Pershe denied and reafirms its previous decision of denying the petition for deferment of the obligatory retirement of Dr. Pershe."

nd so that it be known, I issued this certification under the seal of the University of Puerto Rico, in Rio Piedras, Puerto Rico, this twenty-fifth day of September of nineteen-eighty-one.

[signed]
Luis E. González Vales
Executive Secretary

NOTE: Translated by the appellant.

CONSEJO DE EDUCACION SUPERIOR
UNIVERSIDAD DE PUERTO RICO
Río Piedras, Puerto Rico

1981-82
Certificación número 32E

Yo, Luis E. González Vales, Secretario Ejecutivo del Consejo de Educación Superior, CERTIFICO:----------

Que el Consejo de Educación Superior en su reunión del 16 de septiembre de 1981 aprobó la siguiente resolución en relación con la Moción de Reconsideración radicada por el Dr. Ratimir Maximilian Pershe ante la denegatoria por parte del Consejo del diferimiento de retiro obligatorio solicitado por dicho profesor:

> Este Consejo de Educación Superior estudió la solicitud de diferimiento de retiro obligatorio radicada por el Dr. Ratimir Maximilian Pershe.
>
> Las disposiciones que rigen el diferimiento de retiro obligatorio están recogidas en la Certificación número 59 (1972-73) del Consejo de Educación Superior donde también se establece el procedimiento a seguirse con relación a la solicitud de diferimiento del retiro obligatorio y los trámites ulteriores a la radicación de dicha solicitud.
>
> Es enteramente discrecional del Consejo de Educación Superior la decisión final de lo que considera adecuado ante estas solicitudes.
>
> Estudiado todo el expediente del caso junto con la opinión legal de los asesores del Consejo, se declara sin lugar la reconsideración radicada por el doctor Pershe y se reafirma este Consejo en su decisión anterior de denegar la solicitud sobre diferimiento del retiro obligatorio del doctor Pershe.

Y para que así conste, expido la presente certificación bajo el sello de la Universidad de Puerto Rico, en Río Piedras, Puerto Rico, hoy día veinticinco de septiembre de mil novecientos ochenta y uno.

Luis E. González Vales
Secretario Ejecutivo

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IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN CHAMBER

RATIMIR MAXIMILIAN PERSHE	CIVIL NO. 81-6055 (907)
Petitioner	ABOUT:
v.	PETITION FOR REVIEW
ENRIQUE IRIZARRY, PRES. OF THE COUNCIL OF HIGHER EDUCATION, AND OTHERS	
Respondents	

JUDGMENT*

Having examined the records of the case and the Judgment of the Supreme Court overruling our Decision of the 4th of February, 1982, I deny the Petition for Review in this case. The petitioner has not shown that the respondents abused their discretion by denying him the petition for dispensation, neither that he had a clear right to be heard.

Enter and Serve.

In San Juan, Puerto Rico, this 29th day of November, 1982.

[signed]
PETER ORTIZ
JUDGE

*Summary Judgment (this footnote is supplied by the appellant).

NOTE: This document has been translated by the appellant.

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE SAN JUAN

RAINER MAXIMILIAN FORSTE Recurrente v. ENRIQUE IRIZARRY, PRES. CONSEJO EDUCACION SUPERIOR, Y OTROS Recurridos	CIVIL NUM. 81-6055 (907) SOBRE: SOLICITUD DE REVISION

SENTENCIA

Examinados los autos del caso y la Sentencia del Tribunal Supremo revocando nuestra Resolución del 4 de febrero de 1982, se declara sin lugar la Petición de Revisión en este caso. El recurrente no ha demostrado que la parte recurrida abusara de su discreción al denegarle la solicitud de dispensa ni que tuviera un derecho claro a ser oído.

Regístrese y Notifíquese.

En San Juan, Puerto Rico, a 29 de noviembre de 1982.

PETER ORTIZ
JUEZ

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN CHAMBER

RATIMIR MAXIMILIAN PERSHE	CIVIL NO. 81-6055 (907)
Petitioner	ABOUT:
v.	PETITION FOR REVIEW
ENRIQUE IRIZARRY, PRES. OF THE COUNCIL OF HIGHER EDUCATION, AND OTHERS	
Respondents	

JUDGMENT*

Having examined the records of the case and the Judgment of the Supreme Court overruling our Decision of the 4th of February, 1982, I deny the Petition for Review in this case. The petitioner has not shown that the respondents abused their discretion by denying him the petition for dispensation, neither that he had a clear right to be heard.

Enter and Serve.

In San Juan, Puerto Rico, this 29th day of November, 1982.

[signed]
PETER ORTIZ
JUDGE

*Summary Judgment (this footnote is supplied by the appellant).

NOTE: This document has been translated by the appellant.

IN THE SUPREME COURT OF PUERTO RICO

Ratimir Maximilian Pershe, Petitioner v. Enrique Irizarry, President of the Council of Higher Education and others, Respondents	Num. 0-83-48	Certiorari

DECISION

San Juan, Puerto Rico, this 26 day of May, 1983.

To the preceding motion for reconsideration*, in view of our Decisions of March 24, April 14 and May 5 of the current year, abide by that which has been decided.

This resolved the Court and certifies the Mistress Clerk of the Court. The Chief Judge Mister Trias Monge disqualified himself.

[Signed]

Lady Alfonso de Cumpiano
Clerk of the Court

[Official Seal of the Court]:
Commonwealth of Puerto Rico
General Court of Justice
Supreme Court

*Refering to the Fourth Motion for Reconsideration (this note is supplied by the appellant).

NOTE: This document has been translated into English by the appellant.

IN THE SUPREME COURT OF THE
COMMONWEALTH OF PUERTO RICO

RATIMIR MAXIMILIAN PERSHE, Petitioner v. ENRIQUE IRIZARRY, President of the Counsel of Higher Education of the University of Puerto Rico; ISMAEL ALMODOVAR, President of the University of Puerto Rico; ANTONIO MIRO MONTILLA, Chancellor of the Rio Piedras Campus of the University of Puerto Rico; DENNIS MARTINEZ IRIZARRY, Dean of the Law School of the University of Puerto Rico, Respondents.	CERTIORARI NO.0-83-48

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Ratimir Maximilian Pershe, the petitioner above named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the Commonwealth of Puerto Rico, denying certiorari, entered in this action on the 26th day of May, 1983.

This appeal is taken pursuant to 28 U.S.C. sec. 1258(2).

In San Juan, Puerto Rico this 30th day of June, 1983.

ALBERTO E. LUGO JANER
Attorney for Petitioner
Ave. Ponce de León #613
Hato Rey, Puerto Rico 00917
Tels. (809) 763-4060
763-3813
Residence 728-3037

83 3 junio

IN THE SUPREME COURT OF PUERTO RI

Ratimir Maximilian Pershe, Petitioner v. Enrique Irizarry, President of the Council of Higher Education and others, Respondents	Num. O-83-48	Certiorari

DECISION

San Juan, Puerto Rico, this 10th day of November, 1983.

The preceding petition for translations "in forma pauperis" is denied.

This resolved the Court and certifies the Mistress Clerk of this Court. The Chief Judge Mister Trias Monge disqualified himself. The Associate Judge Mister Rebollo López did not intervene.

[Signed]

Lady Alfonso de Cumpiano
Clerk of the Court

[Official Seal of the Court]
Commonwealth of Puerto Rico
General Court of Justice
Supreme Court

NOTE: This document has been translated into English by the appellant.

83-6591

IN THE SUPREME COURT OF THE UNITED STATES

RATIMIR MAXIMILIAN PERSHE,
Petitioner

v.

ORIGINAL

ENRIQUE IRIZARRY, President of the Council of Higher Education of the University of Puerto Rico; **ISMAEL ALMODOVAR**, President of the University of Puerto Rico; **ANTONIO MIRO MONTILLA**, Chancellor of the Río Piedras Campus of the University of Puerto Rico; **DENNIS MARTINEZ IRIZARRY**, Dean of the Law School of the University of Puerto Rico,
Respondents

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner, Ratimir Maximilian Pershe, asks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed in forma pauperis. Petitioner did not sought leave to proceed in forma pauperis in any court below. Petitioner's affidavit in support of this motion is attached hereto.

Ratimir Maximilian Pershe

RATIMIR MAXIMILIAN PERSHE
Box 22251, University Station
Río Piedras, Puerto Rico 00931
Tel: (809) 767-9333

AFFIDAVIT

I, Ratimir Maximilian Pershe, being first duly sworn according to law, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor, and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed?

No.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

June 30, 1981; $2,908.00 gross, $1,612.53 net.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interests, dividends, or other source?

Yes

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

Federal Social Security, $843.00 per month jointly with my wife Irmi Pershe.

3. Do you own any cash or checking or savings account?

Yes.

a. If the answer is yes, state the total value of the items owned.

$3,890.11

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes.

a. If the answer is yes, describe the property and state its approximate value.

A 1972 Volkswaken automovile, valued at $150.00 approximately.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

My wife Irmi Pershe and I depend upon each other.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalities of perjury.

In San Juan, Puerto Rico, this 12th day of April, 1984.

Ratimir Maximilian Pershe

RATIMIR MAXIMILIAN PERSHE
Box 22251, University Station
Río Piedras, Puerto Rico 00931
Tel: (809) 767-9333

Affidavit No.: 1105

Subscribed and sworn to be true before me by Ratimir Maximilian Pershe, of the above given description, known to me personally to be such, this 12th day of April, 1984; in witness thereof, I, being a notary public of the Commonwelath of Puerto Rico, hereunto set my hand and affix my official seal, in San Juan, Puerto Rico this 12th day of April, 1984.

NOTARY PUBLIC

Reinaldo Campolla Briganti
ABOGADO NOTARIO
PUERTO RICO